

Judge Baker, cont.

where he serves on the board's Academic Affairs committee.

Judge Baker was retained by election in 1992, 2002 and 2012. He and his wife have five children and – so far – nine grandchildren.

Judge Bradford, cont.

yet responsible reduction of juvenile pretrial incarceration in Marion County that is now a statewide model.

Before joining the bench, he was recruited by Marion County Prosecutor Scott Newman as Chief Trial Deputy, in which capacity he managed a staff of more than 100 attorneys for two years. He also served five years as an Assistant United States Attorney for the Southern District of Indiana, where he prosecuted major felony drug cases under United States Attorney Deborah J. Daniels. He was in private legal practice from 1986 to 1991.

A native Hoosier, Judge Bradford earned a B.A. in labor relations and personnel management from Indiana

University-Bloomington in 1982 and his J.D. from Indiana University School of Law-Indianapolis in 1986. He is the Court of Appeals' liaison to the Indiana Judges Criminal Instructions Committee, which provides guidance to judges on jury instructions in criminal cases, and he is a former member of both the Indiana Judges Criminal Policy Committee and the Board of Directors of the Indiana State Judicial Conference.

Judge Bradford is a Distinguished Senior Fellow of the Indianapolis Bar Association and a member of the Marion County Bar Association, Kosciusko County Bar Association, Indiana State Bar Association, American Bar Association, and the Sagamore Inn of Courts. He has taught Indiana Continuing Legal Education Foundation trial practice seminars for more than 10 years and also teaches Forensic Science and the Law at Indiana University-Purdue University Indianapolis, where he is an adjunct instructor.

Judge Bradford is well versed in

contemporary technology and media issues, having served on the Judicial Technology and Automation Committee (JTAC), helping to draft the state judiciary's policies on technology and case management. From 2005 to 2007, he hosted "Off the Bench with Judge Cale Bradford," a legal commentary program on Marion County's government access network.

He frequently lectures on a wide range of legal topics and in 2012 will serve as a Vice President of the Indianapolis Bar Association and on the Indiana State Bar Association Appellate Practice Section Executive Committee.

Judge Bradford is a former director of the John P. Craine House in Indianapolis, a residential alternative to incarceration for women offenders with preschool-aged children. He is a former advisory board member of the Lawrence Youth Football League and has long been active at Castleton United Methodist Church.

He and his wife, Sam, a full-day kindergarten teacher, have five adult children.

400 and counting

The Court of Appeals is pleased to return to Hoosier Boys State for its 400th *Appeals on Wheels* event since the court's centennial anniversary in 2000-2001.

Appeals on Wheels is the court's signature outreach and education program, which enables Hoosiers across the state to observe the court in action and learn more about the judiciary's indispensable role in Indiana government.

The court appreciates the hospitality that Hoosier Boys State has shown the court on numerous occasions. Thank you.



Attorney for the Appellant

Ryan Johnson was born and raised in Bloomfield, IN. He received his undergraduate degree from Indiana University-Bloomington in 2000 with a B.A. in History. He attended Indiana University School of Law-Indianapolis and received his J.D. in 2003. While in law school Ryan participated in the Moot Court Program, Trial Practice, and the Civil Practice Clinic.

Ryan was sworn into the Indiana Bar in October 2003 and later passed the Illinois Bar Exam. He is licensed to practice in all state courts in Indiana and Illinois, the Northern and Southern Federal Districts Courts of Indiana, the Central Federal District Court of Illinois, and the Seventh U.S. Circuit Court of Appeals. Ryan has argued in front of the Seventh Circuit, but this will be his first argument in front of Indiana's appellate court.

After working for a general practitioner in Bloomington, Ryan came to Keller & Keller, LLP and has represented injured clients in all stages of litigation up to and including jury trials and appellate practice.

Attorney for the Appellee

Stephen Bola was born and raised in Indianapolis. He earned a B.S. in Business Administration from Indiana University in 1967. His first two years of law school were completed at Indiana University-Bloomington, and he obtained his J.D. degree from Indiana University-Indianapolis in 1971. From 1969-1971, he clerked for Justices Amos Jackson and Dixon Prentice of the Indiana Supreme Court.

He served in the U.S. Army Judge Advocate General's Corps at Fort Bragg, NC, from 1971 through 1974. For the last 18 months of his tour of duty, he was a Special Courts-Martial military judge. He returned to private practice in Indianapolis in 1975, and has concentrated in the area of insurance defense civil litigation. He is admitted to practice before the Indiana Supreme Court and both the Northern and Southern Federal District Courts.

He and his wife, Dana, have three children, four stepchildren, six grandchildren, and he is available for a round of golf at any time upon reasonable notice.

COURT OF APPEALS OF INDIANA ORAL ARGUMENT AT A GLANCE HOOSIER BOYS STATE - TRINE UNIVERSITY

Dodson v. Seven Corners, Inc.

CIVIL LAW ISSUE:

Whether an employee of Seven Corners, Inc. was acting within the scope of his employment when he was involved in an accident while driving home from a business meeting at a hotel where alcohol was served.

ORAL ARGUMENT:

Thursday, June 19, 2014
1 p.m.

APPEAL FROM:

Marion Superior Court
The Honorable
Theodore M. Sosin, Judge

Synopsis: *Case No. 49A04-1305-CT-267*

On Feb. 22, 2010, Curt Carlson was driving home from a business meeting over dinner and drinks at the Renaissance Hotel in Carmel, IN, when he struck a disabled vehicle on the side of I-465. Its driver, Eboni Dodson, was killed.

Carlson's meeting began at approximately 5:15 p.m. at the hotel bar. The Renaissance Hotel was a place where Carlson and his employer, Jim Krampen, would typically conduct business meetings, and there were other occasions when meetings involved dinner and drinks.

Carlson had four beers while discussing business with Krampen, who owned Seven Corners, and a client. Carlson was not "required" as a part of his employment to be at the business meeting, but this was a "natural

part of [his] employment."

The meeting carried over into dinner, at which Carlson had two glasses of wine. Carlson was made "point man on [the] business deal." Krampen bought the alcohol. Carlson left the hotel to drive home after dinner and drinks, and the accident occurred a few minutes later. Carlson was arrested on suspicion of operating a vehicle while intoxicated after he registered 0.12 on an alcohol breath test machine.

Dodson brought a wrongful death and negligence action against Carlson, the hotel, and Seven Corners. Dodson alleged that Seven Corners was liable for Carlson's actions under the theory of *respondeat superior* (see glossary, next page).

The trial court entered summary judgment for Seven Corners, noting

"It is assumed from the case citations of the parties that Indiana case law has not addressed a circumstance involving an employee consuming alcohol within the course of scope of [sic] employment, and then immediately engaging in a non-employment related activity, such as driving home."

At oral argument, the parties will address whether Carlson's employer, Seven Corners, might be liable for Carlson's acts under a theory of *respondeat superior*, which sometimes permits an employer to be held liable for the acts of an employee.

The doctrine of *respondeat superior* is limited by the "going and coming" rule: "an employee on his way to work is normally not in the employment of the corporation." However, courts have on occasion found exceptions to that rule.

Case Glossary

Affidavit: A written and sworn declaration of facts. It is often presented as evidence in proceedings before a trial, such as a summary judgment motion.

Designated Evidence: Evidence submitted to the court along with the pleadings for resolution of a motion for summary judgment.

Estate: An estate is a legal entity created as a result of a person’s death. An estate arises on a person’s death whether the person died with or without a will. In this case, the estate of Eboni Dodson, who was killed in the accident, represents her interests in this lawsuit.

“Going and coming” rule: The doctrine of *respondeat superior* is limited by the “going and coming” rule: An employee on his way to work is normally not in the employment of the corporation.

Motion: A request that a court make a ruling or issue an order.

Negligence: Conduct that falls below the standards of behavior established by law for the protection of others against unreasonable risk of harm. A person has acted negligently if he or she has departed from the conduct expected of a reasonably prudent person acting under similar circumstances.

Pleadings: The formal legal documents in which a party to a lawsuit sets forth or responds to claims or defenses.

Prima Facie: [Latin, on the first appearance.] The term *prima facie* is used to describe the apparent nature of something upon initial observation. It generally is used to describe two things: the presentation of sufficient evidence by a civil claimant to support the legal claim (a *prima facie* case), or a piece of evidence itself (*prima facie* evidence). For most civil claims, a plaintiff must present a *prima facie* case to avoid dismissal of the case.

Proximate Cause: An act from which an injury results as a natural, direct, uninterrupted consequence and without which the injury would not have occurred. Proximate cause is the primary cause of an injury.

Respondeat Superior: [Latin, let the master answer.] A common-law doctrine that makes an employer lia-

ble for the actions of an employee when the actions take place within the scope of employment. The legal relationship between an employer and an employee is called agency. The employer is called the principal when engaging someone to act for him. The person who does the work for the employer is called the agent. The theory behind *respondeat superior* is that the principal controls the agent’s behavior and must then assume some responsibility for the agent’s actions.

Scope of Employment: Activities of an employee that are in furtherance of duties that are owed to an employer and where the employer is, or could be, exercising some control, directly or indirectly, over the activities of the employee.

Strict Liability: Absolute legal responsibility for an injury that can be imposed on the wrongdoer without proof of carelessness or fault. Sometimes called absolute liability, it is the legal responsibility for damages, or injury, even if the person found strictly liable was not at fault or negligent. Strict liability has been applied to certain activities in tort, such as holding an employer absolutely liable for the torts of her employees.

Summary Judgment: A procedural device to resolve a dispute without a trial when there is no issue as to the facts that would determine the outcome and one party is entitled to judgment as a matter of law. A summary judgment is based on a motion by one of the parties that contends all necessary factual issues are settled or so one-sided they need not be tried.

Tort: French for wrong, a civil wrong, or wrongful act, whether intentional or accidental, from which injury occurs to another. Torts include all negligence cases as well as intentional wrongs that result in harm.

Vicarious Liability: Ordinarily the independent negligence of one person is not imputable to another person. Vicarious liability is a legal doctrine that assigns liability for an injury to a person who did not cause the injury but who has a particular legal relationship (such as employer and employee), to the person who did act negligently.

Did you know ...

- Six of the court’s first 19 judges served in the Civil War, all as Union soldiers or officers. Judge Posey Kime, born 1896, was the first to serve in WW1.
- Nine Court of Appeals judges have later served the Indiana Supreme Court, including current Justice Robert D. Rucker.
- Judge Frank M. Powers served just 33 days. The longest serving judge by far is Patrick D. Sullivan Jr., at more than 16,000 days. He retired in 2007 but still serves as a senior judge.
- One of the five original members of the court, Jephtha New, died from a self-inflicted pistol shot in 1892. His term of office was completed by his son, Willard New.
- Another father-son pair also served on the court: Ralph N. Smith and son Russell W. Smith. An uncle-nephew pair also served: Edgar D. Crumpacker and nephew Harry L. Crumpacker.
- Memorably named judges include Henry Clay Fox, Daniel Webster Comstock, Cassius Clay Hadley and Ira Batman.
- Judge John C. McNutt’s son, Paul McNutt, was Indiana governor from 1933-37 and appointed two judges to the Court of Appeals.
- One foreign-born judge attained the court: George L. Reinhard was born in Bavaria in 1843, served in the Civil War, and wrote “The Common Sense Lawyer.”
- Judge Thomas Faulconer made Indiana history when, as a Marion County judge, he opened his courtroom doors to TV and newspaper cameras for a celebrated murder trial in 1959.
- Judge Joseph H. Shea resigned his Appeals Court seat in 1916 to become President Woodrow Wilson’s ambassador to Chile.

Today’s Panel of Judges

*The Honorable
Melissa S. May
(Vanderburgh County)*

Born in Elkhart, **Melissa S. May** studied criminal justice at Indiana University-South Bend before earning her law degree from Indiana University School of Law-Indianapolis in 1984. She then launched a 14-year career in private legal practice in Evansville that focused on insurance defense and personal injury litigation. Judge May moved directly from private practice to the Court of Appeals in 1998 and was retained by election in 2000 and 2010. She has served as Presiding Judge of the Fourth District, which covers all of Indiana. Judge May has long been active in local, state and national bar associations and foundations, with a particular focus on continuing legal education and appellate practice. At various times, Judge May has chaired the Indiana State Bar Association’s Litigation and Appellate Practice sections and was secretary to the Board of Governors. As chair of the Indiana Pro Bono Commission, Judge May worked with 14 pro bono districts to train lawyers and mediators on how to assist homeowners facing foreclosure. She also serves on an Indiana Judicial Conference Committee that translated all civil jury instructions into “plain English.” Judge May teaches trial advocacy at Indiana University McKinney School of Law and frequently speaks on legal topics to attorneys, other Judges, schools, and other professional and community organizations. She is special counsel to the American Bar Association’s Standing Committee on Attorney Specialization, on which she’s served since 2003. In October 2011, Judge May received the Women in the Law Recognition Award from the Indiana State Bar Association for her dedication to helping women advance in the legal community. She and her husband live in Morgan County.

*The Honorable
John G. Baker
(Monroe County)*

John G. Baker was named to the Court of Appeals in 1989, which makes him the longest-serving member on the current Court. He has served as Presiding Judge of the Court’s First District, which covers all of southern Indiana, and as Chief Judge of the Court from 2007-2010. Judge Baker grew up along the Ohio River in Aurora, IN, but attended high school at Culver Military Academy in northern Indiana. He studied history at Indiana University-Bloomington, and later received his law degree from Indiana University School of Law-Bloomington. He practiced law in Monroe County for many years before joining the Monroe County bench as first a county and later a Superior Court Judge. Diligently, he handled more than 15,000 cases in 13 ½ years on Monroe County benches, and has written more than 4,000 majority opinions for the Court of Appeals. Judge Baker is greatly interested in the history, structure and organization of Indiana’s judicial branch of government. He regards Indiana judges not as remote figures who conduct abstract arguments, but as people fully engaged in the life of the law and their communities. He has taught in college and law school and is active in local, state and national bar associations. In 2013, Judge Baker retired after 33 years of teaching at the School of Public and Environmental Affairs, Indiana University-Bloomington. He continues to teach during the Spring semester at the McKinney School of Law. Judge Baker’s many community activities include his church, the YMCA and the Boy Scouts (where he attained Eagle Scout status as a youth). In 2011 he joined the Board of Trustees of Garrett-Evangelical Theological Seminary in Evanston, IL,

*The Honorable
Cale J. Bradford
(Marion County)*

Cale J. Bradford has broad experience in both the state and federal legal systems, including service as a Marion County deputy prosecutor, a public defender, a federal prosecutor, a trial court judge and an appellate court judge. In addition, he has six years’ experience in private legal practice. He was appointed to the Court of Appeals of Indiana by Gov. Mitch Daniels and took his seat on Aug. 1, 2007. In that time, he has participated in more than 2,000 appellate decisions and more than 80 oral arguments. He has written more than 700 majority decisions, including 145 published opinions. Judge Bradford also led a successful effort to encourage the mediation of legal disputes pending before the Court of Appeals, and greatly contributed to creation of the Judicial Retention website that helps voters make informed decisions about Appellate Judges standing for retention election. Before joining the Appeals Court, he served the people of Marion County for more than 10 years as Judge of the Marion Superior Court, including seven years in the criminal division and three in the civil division. Twice, his colleagues elected him as presiding judge of the Court. During that tenure, Judge Bradford led two major initiatives that addressed critical criminal justice issues facing Marion County. He chaired the Marion County Criminal Justice Planning Council, which recommended improved responses to jail overcrowding, staffing and budgets. Those efforts led to the end of 30 years of federal oversight of the Marion County Jail and to security improvements at the county’s Juvenile Detention Center. He also led implementation of the Annie E. Casey Foundation Juvenile Detention Alternative Initiative, which resulted in a comprehensive